



IT IS ORDERED as set forth below:

Date: December 6, 2011

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	CASE NUMBER
	:	
GEORGE WESLEY TAYLOR,	:	06-76846-MGD
	:	
Debtor.	:	CHAPTER 13
	:	

ORDER DENYING DEBTOR'S MOTION REQUESTING IMMEDIATE RESPONSE

This chapter 13 case is before the Court on George Wesley Taylor's *pro se* Motion Requesting Immediate Response (3rd request). (Docket No. 146). The matter came on for hearing on November 30, 2011.¹ Present at the hearing were Mr. Taylor ("Debtor") and K. Edward Safir as counsel for the Chapter 13 Trustee.

In the present Motion, Debtor seeks an order from this Court (1) treating the second mortgage holder on his residence, HFC, as unsecured; (2) waiving the chapter 13 Trustee fees; (3) treating Titlemax, a car creditor, as unsecured instead of secured; and (4) setting a hearing on this Motion. The Trustee filed a response to the Motion and Debtor filed a Reply, in which he withdrew his

¹ Also on for hearing was the Trustee's motion to dismiss for failure to make plan payments. (Docket No. 145). An Order conditionally denying Trustee's motion was entered separately. (Docket No. 152).

objection to payment of the Chapter 13 Trustee fees. (Docket Nos. 150 & 151).

Debtor submits in his Motion and argued at the hearing that because his residence has a value less than the amounts secured thereby, that this Court has the authority to order that HFC be treated as an unsecured creditor. As a preliminary matter, Debtor has failed to properly serve HFC under Federal Rule of Bankruptcy Procedure 7004 as evidenced by the exhibits attached to Debtor's Motion. Additionally, the legal basis for Debtor's request to treat secured creditors as unsecured is without merit.

Debtor filed this chapter 13 case on December 29, 2006. Debtor's schedules indicated that, as of the petition date, the value of his residence was \$181,000.00. The first mortgage holder, at the time of the petition, was Countrywide Home Loans. Countrywide filed a secured proof of claim for \$159,955.70. Debtor did not object to the proof of claim. HFC, the second mortgage holder, filed a secured proof of claim in the amount of \$36,304.23. Similarly, Debtor did not object to HFC's proof of claim. Debtor's plan was confirmed on February 28, 2007. Under the confirmed plan, Debtor elected to treat the claims of the mortgage holders as secured; retain the property; make all post-petition mortgage payments directly to Countrywide and HFC as those payments ordinarily come due; and pay the pre-petition arrearage through the plan. Debtor filed one post-confirmation modification that was partially granted, and none of the modifications affected the secured mortgage creditors. (Docket Nos. 99 & 117).

Pursuant to 11 U.S.C. § 1327(a), "[t]he provisions of a confirmed plan bind the debtor and each creditor" Confirmation of a Chapter 13 plan is essentially an adjudication of litigation over the issues of the classification and treatment of claims provided for in a proposed chapter 13 plan, and is res judicata on those issues. *Ford Motor Credit Co. v. Bankr. Estate of Parmenter (In re Parmenter)*, 527 F.3d 606, 609 (6th Cir. 2008); *In re Stevens*, 130 F.3d 1027, 1029 (11th Cir. 1997). Modification of a confirmed plan under § 1329 is permitted in certain circumstances. Debtor does not propose to modify the plan in this Motion, and the proposed change to HFC's treatment is not proper under the modification provision of § 1329. *Ford Motor Credit Co. v. Bankr. Estate of Parmenter (In re Parmenter)*, 527 F.3d 606, 609 (6th Cir. 2008). As § 1329(a) indicates, the changes permitted by the Code generally concern modifications to the amount and timing of payments. Here, Debtor and HFC are bound by the terms of the confirmed chapter 13 plan that treats the claim as secured.

At the hearing, Debtor asserted that he sought to strip HFC's second mortgage lien based on the value of his home. Despite the confirmed plan binding the Debtor to the chosen course of action with HFC, any lien stripping action would require the Court to assess the value of Debtor's home at the time of the petition – December of 2006. The petition date is the "watershed date of a bankruptcy proceeding." *Johnson v. GMAC (In re Johnson)*, 165 B.R. 524, 528 (S.D. Ga. 1994). "[C]reditors' rights are fixed (as much as possible)" as of this date. *Id.* The relief Debtor now seeks, pursuant to §§ 506(d) and 1322(b)(2), is not available because the value of Debtor's residence, as offered by Debtor through his schedules and pleadings, show some value for which the second mortgage lien can attach. Therefore, the anti-modification provision in § 1322(b)(2) protects HFC's mortgage as secured because, at the time of the petition, there was some existing equity in Debtor's principal residence. *Tanner v. FirstPlus Fin., Inc. (In re Tanner)*, 217 F.3d 1357, 1360 (11th Cir. 2000).

Any prior motions by Debtor, whether termed "cramdown," "strip off," or otherwise, would not entitle Debtor to the relief he seeks in this Motion.² The confirmed plan treating HFC as secured, and the value of Debtor's home and mortgage balances as of the petition date prevent Debtor from now seeking to treat HFC's claim as unsecured, regardless of the present value of Debtor's residence.

Similarly, the res judicata effect of a confirmed chapter 13 plan also prevents Debtor from

² Debtor specifically references the pleadings he filed on December 2, 2009 (Docket No. 128) and June 22, 2010 (Docket No. 136). In Docket No. 128, Debtor stated that the value of his residence was \$188,900 and the balance on the first mortgage was \$184,861, providing value for HFC's lien to attach. The requested relief was to bifurcate HFC's claim and treat a portion of its claim as unsecured. In Docket No. 136, Debtor again sought to "cramdown" HFC's claim. An Order denying Debtor's request was entered August 3, 2010, explaining:

According to Debtor's valuation of his house and the higher amount provided as his first mortgage debt, it appears that Debtor has \$4,039.51 of equity in his home to which the second mortgage can attach. When, as here, it appears that a second mortgage lender's claim is secured by a home with some value beyond the first mortgage debt, the Bankruptcy Code does not permit a debtor to reduce that mortgage lender's secured claim to the fair market value of the property. *Nobelman v. American Savings Bank*, 508 U.S. 324, 332 (1993). Further, Debtor's confirmed plan classified HFC's claim as a secured claim. Upon confirmation, Debtor is bound by the terms of that plan. *In re Stevens*, 130 F.3d 1027, 1029 (11th Cir. 1997). Debtor therefore cannot use a post-confirmation plan modification to reclassify HFC's claim from secured to unsecured. *In re Torres*, 336, B.R. 839, 842–843 (Bankr. M.D. Fla. 2005); see also *In re Nolan*, 232 F.3d 528, (6th Cir. 2000). Accordingly, the relief Debtor requests is not permitted and is therefore denied. Docket No. 136.

changing the treatment of Titlemax to unsecured. Accordingly, it is

ORDERED that Debtor's Motion is **DENIED**.

IT IS FURTHER ORDERED that Debtor's request to change the treatment of HFC's claim is **DENIED**.

IT IS FURTHER ORDERED that Debtor's request to change the treatment of TitleMax's claim is **DENIED**.

The Clerk is directed to mail a copy of this Order to the parties on the attached distribution list.

END OF DOCUMENT

Distribution List:

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